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ALEXANDER L. STEVAS,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

No. 82-1020

TINY SMITH, Petitioner,

versus

SOUTHERN RAILWAY COMPANY, Respondent.

REPLY BRIEF FOR PETITIONER

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INDEX

Page

Point I:

Contrary to respondent's contention, the record reveals that respondent defended the case at trial on a theory different from that on which the court below based its reversal of the trial judge's denial of respondent's motion for a directed verdict. .. 1

Point II:

Contrary to respondent's contention, the petition for a writ of certiorari challenges the reversal by the court below of petitioner's judgment for the tortious interference with a contract and the malicious prosecution which related to the air conditioner as well as the malicious prosecution which related to the other services performed by petitioner. 3

Conclusion 5

SUPREME COURT OF THE UNITED STATES

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TINY SMITH, Petitioner,

versus

SOUTHERN RAILWAY COMPANY, Respondent.

**On Petition for a Writ of Certiorari to
The United States Court of Appeals for The
Fourth Circuit**

REPLY BRIEF FOR PETITIONER

**In reply to the Respondent's Brief in
Opposition to the Petition For a Writ of
Certiorari, petitioner submits the following:**

POINT I

**CONTRARY TO RESPONDENT'S CONTENTION, THE
RECORD REVEALS THAT RESPONDENT DEFENDED THE
CASE AT TRIAL ON A THEORY DIFFERENT FROM THAT
ON WHICH THE COURT BELOW BASED ITS REVERSAL
OF THE TRIAL JUDGE'S DENIAL OF RESPONDENT'S
MOTION FOR A DIRECTED VERDICT.**

Contrary to respondent's contention on

page 7 in its brief that it is absurd for petitioner to assert that the court below injected a new theory in the case by reversing on the basis that the respondent's police officers had no knowledge of a respondent's common practice of billing, exculpatory of petitioner's guilt of the charges lodged against him, petitioner wishes to point out that reference to the record (respondent's motion for direction of verdict, Appendix to Pet. for Cert., page 108; respondent's motion for judgment n.o.v, Appendix to Pet. for Cert., pages 126-127) and the statement in respondent's brief (Pg. 8, 1st 3 lines) that "Southern's whole defense to Smith's claim was that information about the alleged common practice could not have been withheld by its police officers because there was no such common practice-indeed..." (Emphasis added), clearly reveal that respondent defended at trial on the theory that the alleged common billing practices of respondent, exculpatory of petitioner's guilt of the charges lodged

against him, did not exist and therefore its police officers had no knowledge of such practices. Respondent did not defend simply on the theory that its police officers had no knowledge of this practice. This was a new theory injected into the case by the court below after conceding that the evidence as to the issue raised by the theory on which the case was tried to-wit, whether or not the alleged common billing practices of respondent existed, was "conflicting."

(Op. of 4th Cir., Appendix to Pet. for Cert., page 61)

POINT II

CONTRARY TO RESPONDENT'S CONTENTION, THE PETITION FOR A WRIT OF CERTIORARI CHALLENGES THE REVERSAL BY THE COURT BELOW OF PETITIONER'S JUDGMENT FOR THE TORTIOUS INTERFERENCE WITH A CONTRACT AND THE MALICIOUS PROSECUTION WHICH RELATED TO THE AIR CONDITIONER AS WELL AS THE MALICIOUS PROSECUTION WHICH RELATED TO THE OTHER SERVICES PERFORMED BY PETITIONER.

Contrary to respondent's assertion in its brief in opposition (page 8), petitioner respectfully submits that his petition does

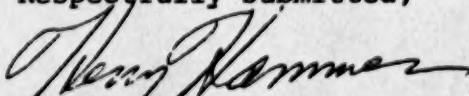
challenge the reversal by the court below of petitioner's judgment for tortious interference with a contract and the malicious prosecution charge relating to the air conditioner as well as the other charge relating to services performed. This is evidenced by reference to page 11 of the petition wherein petitioner pointed out that if there was lack of probable cause by reason of the fact that the common billing methods of respondent exculpatory of petitioner's guilt existed and were not disclosed to the prosecuting authorities it would support the verdict of the jury on all causes of action, but if the alleged common billing practices did not exist, then all of petitioner's causes of action must fail. Admittedly, the fact of the exculpatory practices by respondent was not disclosed to the prosecuting authorities for the reason, as contended by respondent, that such fact allegedly did not exist. However, the court below did hold that the evidence "was conflicting" as to the crucial issue of whether or not the

allegedly common billing practices did in fact exist.

CONCLUSION

For the foregoing reasons and those submitted in the Petition for a Writ of Certiorari, it is respectfully submitted that the petition should be granted and the judgment of the Court of Appeals should be reversed.

Respectfully submitted,



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